Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

HELEN STACEY

Petitioner

v.

CITY OF HERMITAGE and
CITY OF HERMITAGE BOARD OF APPEALS

Respondents

On Petition for a Writ of Certiorari to the
Commonwealth Court of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

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45 pp

QUESTIONS PRESENTED

Did the City's entry onto Petitioner's property without consent to search and to ultimately seize and demolish her home without a specific warrant or other judicial process by the City, violate the prohibition against unreasonable searches and seizures in the Fourth Amendment and the prohibition against causing deprivations of property without due process in the Fourteenth Amendment?

Did the trial judge and the lower court clerk, who unlawfully altered Petitioner's notice of appeal, deny Petitioner due process in violation of the Fourteenth Amendment by refusing to process the notice of appeal as required by the Pennsylvania Rules of Appellate Procedure?

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Rule 1925 .....

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OPINIONS BELOW

The opinion and order of the Commonwealth Court of Pennsylvania is reported at 789 A.2d 772 (2001) and reproduced in Appendix A hereto. The order denying reconsideration is reproduced in Appendix B. The order of the Pennsylvania Supreme Court denying the petition for allowance of appeal is reported at 806 A2d 865 (Pa. 2002) and reproduced in Appendix C. The order denying reconsideration is reproduced in Appendix D.

JURISDICTION

The order of the Commonwealth Court of Pennsylvania was entered November 8, 2001, and rehearing was denied and entered January 29, 2002. A timely petition for hearing before the Pennsylvania Supreme Court was filed on February 28, 2002, and denied July 10, 2002. A petition for reconsideration there was denied September 24, 2002.

The jurisdiction of the United States Supreme Court to review the decision below is conferred by Title 28,United States Code, Section 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourteenth Amendment to the United States Constitution provides in part:

> . . . No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction of equal protection of the laws.

Sections PM-105.3, PM-110.0 and PM-111.1 of the City of Hermitage Property Maintenance Code are reproduced in Appendix E.

Rules 902, 905 and 1925 of the Pennsylvania Rules of Appellate Procedure are reproduced in Appendix F.

STATEMENT OF THE CASE

Petitioner Helen Stacey, now 93, lived with her husband in the family home for over 50 years in Hermitage, Pennsylvania. Their home was a large brick commercial building, one of the first along the City's main drag. The Staceys ran a mom-and-pop grocery store, service station and restaurant. The building had no front or side yard setbacks and became a non-conforming eyesore under the City's later zoning laws.

Mr. Stacey was an auto mechanic and stored vehicles for parts in the back yard. Over the years, the City cited him for violating its junk car ordinance.

In 1997, after a heavy rain from City streets flooded the cellar, the City quickly evicted the elderly couple from their home, the City seeing an opportunity to get rid of the nonconforming structure. The City cited the Staceys for violating the municipal building code, alleging the structure was in danger of collapse and uninhabitable. Mr. Stacey died a few months later at 92.

The City then boarded the building up and padlocked the doors. An administrative hearing was held on the condition of the home, and the volunteer citizen board found the property to be a public nuisance because of rain damage to the foundation. Mrs. Stacey had no opportunity to present her engineer who was involved in Easter ceremonies when the hearing was held.

Mrs. Stacey appealed the decision, the county court affirmed, but the City failed to show the necessity of demolishing the building while other less drastic alternatives existed. Mrs. Stacey hired a contractor to begin repairs, and a potential buyer was willing to complete repairs the City could work with.

The City gave Mrs. Stacey thirty days to repair or demolish. They did not warn her if repairs were not done the City would demolish the building. They did not advise her of the right to appeal that decision. See Property code sections in Appendix E.

Mrs. Stacey did not meet the deadline because her contractor was overwhelmed with other work. She asked for an extension which the City declined. Her contractor completed some repairs within the week, but the City had already put out bids to demolish the home.

A month later, Mrs. Stacey's son came to the homesite with an engineer to inspect the work that had already been done. They came upon a group of City cars surrounding the building and discovered City personnel inside the home after they had shattered glass in the front door and jimmied the lock. They left when Stacey's son order them out for trespassing and called the State police who failed to show up.

Standing inside the entrance, the son yelled out to the City inspector that he could not come in without a warrant. The inspector indicated he had none. Then the

police chief in plainclothes grabbed the son through the doorway, dragged him outside and threatened arrest for interfering. For the next two months, the City went in and out of the Stacey home without a warrant or other judicial process. They inspected and collected evidence against Stacey and removed private property in violation of the City's own law and the state's Crimes Code. All the while, they refused to let Stacey's engineer do an inspection.

Mrs. Stacey petitioned the Pennsylvania Mercer County Court of Common Pleas for an injunction to stop the City from destroying her home. Judge Thomas Dobson granted a temporary injunction but vacated it after a hearing where Mrs. Stacey was denied a fair opportunity to present expert testimony or evidence.

Mrs. Stacey urged her attorney, Jerry Cartwright of New Castle, Pennsylvania, to file an immediate notice of appeal. And he did on September 7, 2000. But the court failed to process it as required by Rules 902, 905 and 1925 of the Pennsylvania Rules of Appellate Procedure (APPENDIX F). The court clerk received the notice for filing and time-stamped it but refused to enter it on the docket. Instead she altered it by using "white out" and obliterated the time-stamp and a notation that a filing fee was paid, all in violation of Pennsylvania Crimes Code §§ 4910 and 4911 by tampering with public records (APPENDIX G). In concert with the clerk, Judge Dobson prevented the processing of Mrs. Stacey's notice of appeal when he denied her motion for an appellate stay, telling the clerk

his order dissolving the injunction was interlocutory and could not be appealed . The judge's advice contradicted Rule 311(a)(4)(ii) of Pennsylvania Appellate Procedure, which allows appeals as of right from a decree nisi that "dissolves a previously granted preliminary injunction effective upon the entry of a decree nisi" (APPENDIX F).

This made it easy for the City to demolish Mrs. Stacey's home with no protective stay pending appellate review, despite the fact she had a $50,000 bond in place holding the City harmless. What made it easier was the fact that Atty. Cartwright failed to show up for the final hearing on November 6, 2000. When the final order was entered on the docket neither Judge Dobson nor the court clerk made any effort to process Mrs. Stacey's notice of appeal as mandated by Pa.Rule.A.P. 905:

> Upon receipt of the notice of appeal the clerk shall immediately stamp it with the date. . .which date shall be shown on the docket. . . . A notice of appeal filed . . . before the entry of an appealable order shall be treated as filed after such entry and on the day thereof . . . . The clerk shall immediately transmit to . . . the appellate court . . . a copy of the notice of appeal showing the date of receipt . . . .

At the final hearing on November 6, Judge Dobson had communications with City attorney H. William White III, outside the presence of Mrs. Stacey or her attorney. Atty. White knew she wanted to appeal and she needed

a stay to stop him and the City. Within minutes after the end of the hearing, Atty. White had the clerk enter the final order, and within hours, he and the City through sharp practices had Mrs. Stacey's home and all her belongings of over 50 years on the ground like dust in the rubble. A lifetime of blood, sweat and tears went into the family home for Helen Stacey.

Without first obtaining a warrant or other judicial process, the City seized the Stacey property with destructive force by entering the family home and demolishing it and all its contents with heavy equipment. Among the family items destroyed were private papers, tax returns, books, original artwork, collectibles and family photos—a building and an accumulation of over 50 years, now impossible to inventory or inspect or cherish, and no longer available for further judicial proceedings. Pennsylvania Crimes Code § 4910 provides criminal sanctions for destruction of evidence with intent to impair its availability for a pending official proceeding (APPENDIX G).

The City assessed Mrs. Stacey over $13,000 for costs in demolishing her home and placed a lien on the property. The City did not provide Mrs. Stacey with an opportunity to contest the assessed costs of the lien, even though she applied for a board hearing on the demolition. The City refused her a hearing provided for in the City Property Maintenance Code, Sections PM-110.4 and PM-111.1 (APPENDIX E). Again the City failed to adhere to its own ordinance and procedures.

At no time did the City ask Mrs. Stacey's permission nor notify her so she could be present to protect her property. At no time did the City obtain warrants or have written complaints for any of these entries to search and seize her home. No emergency required the immediate removal of the building. It was boarded up and secure from unauthorized entry and was not a hazard. The City introduced no evidence on cost estimates to repair.

There was ample time between August and November 6, 2000, for the City to obtain a specific warrant. Under the City's Property Maintenance Code, Sections PM-105.3 and PM-110.3 authorize City employees to enter for search and seizure and demolition, but Section PM-105.3, requires the City to obtain a judicial warrant or other judicial authorization for entry (APPENDIX E). Section PM-106 makes it a criminal act to resist or oppose any provision of the Code. Probable cause is not necessary to enter any structure in the sole subjective opinion of the code official.

The Constitutional issues were raised in the lower court in a statement of matters complained and at trial. They were also raised on appeal in Petitioner's briefs and applications and also by Petitioner's son in an amicus curiae brief on appeal to the Pennsylvania Commonwealth Court and Supreme Court, who decided against Mrs. Stacey. APPENDIX A thru D.

The trial court and Commonwealth Court expressly found it was proper for the City to seize and demolish Mrs. Stacey's home without a specific warrant or other judicial process. The Commonwealth Court held that she was afforded due process throughout the proceedings and availed herself of the legal avenues available to her. She raise the Constitutional issues in her petition to the Pennsylvania Supreme Court which was denied even though there were issues of violation of the high court's own Rules of Appellate Procedure by the trial court's failure to process her "first" notice of appeal and alteration of the notice in violation of the Pennsylvania Crimes Code.

REASONS FOR GRANTING PETITION SUBSTANTIAL QUESTIONS OF PUBLIC IMPORTANCE.

The decisions below allowing the destruction of private homes by public officials without specific warrant, judicial process or emergency, sanction the unreasonable searches and seizure of homes, in violation of the Fourth and Fourteenth Amendments. Certainly this raises substantial questions of great public importance.

For example, almost 2000 residential and family structures were demolished over a recent five year period in the Dallas area of Texas. Take that figure times, how many more places throughout the nation where homes are demolished, and the total would be a

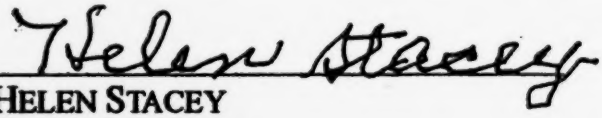
significant number of demolitions. If a fraction of the total represents a predicament like Mrs. Stacey's with total destruction of almost everything she ever owned, worked and lived for, then this case is extremely vital to the country because the Court rarely hears cases like this for lack of plaintiff expertise and resources of time and money. Probably most if not all the social victims in a demolition predicament are poor. Certainly this raises substantial issues of great public importance.

The Fourth Amendment provides the only means by which the government can invade a person's home, that is, thru a search warrant, excepting emergency situations. *Camara v. Municipal Court*, 387 U.S. 523 (1967).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



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